IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.: 1348 of 2001.

Decided on: 27.4.2007.

State of Himachal Pradesh.

… … … Petitioner.

Versus

Sohan Lal.

… … … Respondent.

Coram:

The Hon'ble Mr. Justice Rajiv Sharma, J.

Whether approved for reporting? Yes.

For the Petitioner (s): **Mr. M.S. Chandel, Advocate General with Mr. M.A. Khan and Ms. Meenakshi Sharma, Deputy Advocates General.**

For the Respondent (s): **Mr. K.D. Sood, Advocate.**

Rajiv Sharma, Judge (Oral):

This petition is directed against the award dated 21.5.2001 passed by the Industrial Tribunal-cum-Labour Court, Shimla.

The brief facts necessary for adjudication of this petition are that the respondent-workman worked as Rasoia (Kitchen helper) in Rest House, Raj Bhawan, Shimla w.e.f. 1st March, 1989 to 30th May, 1994. His services were terminated w.e.f. 1st July, 1994. Aggrieved by his retrenchment, the petitioner approached the competent authorities under Industrial Disputes Act, 1947 and accordingly reference No.117 of 1997 was made

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Whether reporters of local papers may be allowed to see the judgment? Yes.

by the Government to the Labour Court, Shimla. He filed a claim before the Labour Court to which reply was filed by the petitioner-State. The sole ground taken by the workman before Labour Court was that his retrenchment was void ab initio for non-compliance with the mandatory provisions of Section 25-F of the Industrial Disputes Act, 1947. The petitioner-State has argued before the Labour Court that the workman had not completed 240 days and the alternative plea of abandonment of job by the workman was also taken.

I have perused the record and heard the parties. The Labour Court has come to the right conclusion that the workman could not be retrenched without complying with Section 25-F of the Industrial Disputes Act, 1947. Though the petitioner-State has place on record the copy of man-days to substantiate its plea that the workman has not completed 240 days preceding the date of his retrenchment. The settled law for counting 240 days is that the same has to be calculated preceding the date of retrenchment during 12 calendar months and not a year.

Hon'ble Supreme Court in **"Surendra Kumar Verma etc., v. The Central Government Industrial Tribunal-cum-Labour Court, New Delhi and another, AIR 1981 SC 422"** has laid down the manner in which 240 days are to be calculated under the Industrial Disputes Act. Your Lordships of Hon'ble Supreme Court have opined as under: -

> **"These changes brought about by Act 36 of 1964 appear to be clearly designed to provide that a workman who has actually worked under the employer for not less than 240 days during a period of twelve months shall be deemed to have been in continuous service for a period of one year whether or not he has in fact been in such continuous service for a period of one year. It is enough**

that he has worked for 240 days in a period of 12 months; it is not necessary that he should have been in the service of the employer for one whole year.

The plea raised by learned Advocate General that it was a case of abandonment of the job and not retrenchment has not been substantiated on the basis of the pleadings before the Labour Court. How the plea of abandonment raised by the Management is to be resolved has been settled by Hon'ble Supreme Court in **"G.T. Lad and others v. Chemicals and Fibres India Ltd., AIR 1979 SC 582"**. Your Lordships of Hon'ble Supreme Court have opined as under: -

> **"From the connotations reproduced above it clearly follows that to constitute abandonment, there must be total or complete giving up of duties so as to indicate an intention not to resume the same. In Buckingham Co. v. Venkatiah (1964) 4 SC R 265: (AIR 1964 SC 1272), it was observed by this Court that under common law an inference that an employee has abandoned or relinquished service is not easily drawn unless from the length of absence and from other surrounding circumstances an inference to that effect can be legitimately drawn and it can be assumed that the employee intended to abandon service. Abandonment or relinquishment of service is always a question of intention, and normally, such an intention cannot be attributed to an employee without adequate evidence in that behalf. Thus whether there has been a voluntary abandonment of service or not is a question of fact which has to be determined in the light of the surrounding circumstances of each case."**

Mr. Advocate General towards the end of hearing has vehemently argued that the Labour Court cannot award back wages to the extent of

25% to the workman. This Court has directed the petitioner-State on 27th February, 2004 to deposit within two months the amount of back wages as determined by the Labour Court. The petitioner has not complied with the order dated 27.2.2004 and this Court on 5.5.2004 has vacated the interim orders passed from time to time. The conduct of the petitioner-State of not depositing the back wages in the Registry of this Court as directed on 27.2.2004 coupled with the fact that there is no illegality in the award dated 21.5.2001; the plea of Advocate General is to be rejected. The workman has been prevented from discharging his duties after retrenching him without following the law. Once the retrenchment of the petitioner is set aside, the workman is entitled to the back wages. The Labour Court has only allowed payment of 25% back wages which is up-held by this Court. No other point was urged by the petitioner-State.

Accordingly, the writ petition is dismissed with costs. The workman is held entitled to costs of Rs.5,000/- to be paid by the petitioner-State within a period of four weeks.

(Rajiv Sharma)
Judge

April 27, 2007.
(sck)